

ST. LUCIA

MOTION NO.1 of 1975

BETWEEN: WILLIAM BRUCE WILLIAMS Applicant

AND

EMANUEL HENRY GIRAUDY  
EUDES BOURNE RespondentsBefore: The Honourable the Chief Justice  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice PeterkinWinston Cencic, Beryl Edwards with him, for applicant.  
Vincent Floissac, Q.C., Primrose Bledman with him for respondent.

---

1975, June 19 & 20, October 13

---

J U D G M E N TDAVIS C.J.

This is a motion for leave to appeal from an order made by Bruno J. dated the 10th January 1975, dismissing with costs the application of the applicant for enlargement of time to furnish particulars in an election petition.

Counsel for the respondent at the commencement of the proceedings raised a point in limine, that the Court had no jurisdiction to entertain an appeal of this nature, having regard to subsection (7) of section 34 of the Constitution and consequently had no jurisdiction to grant leave.

Counsel for the applicant conceded that the order of 10th January 1975 was an interlocutory decision.

Counsel for the respondent submitted that the order of 10th January 1975, against which leave to appeal is sought, was a decision in proceedings under section 34(7) of the Constitution. He referred the Court to the marginal note to this section and submitted that any application to the Court, however minor, was a proceeding; that "Court" included judge in chambers and also a master or a district registrar; and that "proceedings" included interlocutory proceedings. On this point counsel referred to Words and Phrases Legally Defined, 2nd Edition, Vol. 4. He also cited the following authorities: Harkness v Bell's Asbestos & Engineering Ltd. (1966) 3 All E.R. 843; R. v. Area Committee etc. (1967) 2 All E.R. 419; R. v Westminster Rent Officer (1973) 3 All E.R. 119.

Counsel for the applicant submitted that the decision of the learned judge in refusing to enlarge the time was not a decision in a proceeding.

\* \* \*

section 34 of the Constitution, that the decision of 10th January was a decision in an election petition and a proceeding under section 74 of the Legislative Council (Elections) Ordinance, Chapter 121 of the Laws of St. Lucia, as preserved by sections 27 and 101(2) of the Constitution.

Having regard to the admission of counsel for the applicant that the order was a proceeding it seems unnecessary to decide this point and the only question which arises is whether it is a proceeding under section 34 of the Constitution or under section 74 of Cap.121. However, lest I misunderstood counsel and it is necessary to decide the point, I would hold that "a proceeding" is any step which is taken in an action before a final determination and includes interlocutory matters. The application before Bruno J. was such a step.

Chapter III of the St. Lucia Constitution Order 1967 deals with the legislature. Section 23 establishes the legislature. Section 24 provides for a House of Assembly. Section 25 deals with qualifications for membership of the House while section 26 deals with disqualifications. Section 27 makes provision for the election of elected members and section 28 for the appointment of nominated members. The tenure of office of the House of Assembly is to be found in section 29. Section 30 mentions matters of inability as to nominated members. Section 31 provides for a Speaker and Deputy Speaker. Section 32 for a Supervisor of Elections, and section 33 for a clerk to the House of Assembly. Section 34 deals with the determination of questions as to membership of the House of Assembly.

Counsel for the applicant contended that sections 27 and 101(2) of the Constitution preserved the jurisdiction of the Court for the hearing of election petitions.

Section 27(1) of the Constitution in addition to providing that each constituency shall return one elected member to the House of Assembly provides in my opinion, that there should be a law setting out the manner in which such election should take place. Clearly then this is a matter which falls to be prescribed and if there is an existing law making such provisions then section 101(2) would apply, but it is to be observed that such existing legislation must be applied subject to the provisions of the Constitution. When one looks at the remaining subsections of section 27 which provide for the qualification of electors and the manner of voting it will be seen that the section has nothing whatever to do with the jurisdiction of the Court in election petitions.

On the other hand, section 34(1) of the Constitution deals with the determination of questions of membership of the House of Assembly and reads as follows:

"34.(1) The High Court shall have jurisdiction to hear and determine any question whether -

- (a) any person has been validly elected as an elected member of the House of Assembly;
- (b) any person has been validly appointed as a nominated member of a temporary member of the House;
- (c) any person who has been elected as Speaker of the House from among persons who were not members thereof was qualified to be so elected or has vacated the office of Speaker;
- (d) any elected member or nominated member or temporary member of the House has vacated his seat or is required under the provisions of **section 29(3)** of this Constitution to cease to perform any of his functions as an elected or nominated member or temporary member of the House of Assembly."

On a perusal of the provisions of the Constitution, this section is the only one which confers jurisdiction on the High Court in election matters. Counsel for the applicant submitted that this section did not give jurisdiction to the High Court in election petitions but rather dealt with membership only. I do not agree with this submission. Section 34(1)(a) states that the Court shall have jurisdiction to hear and determine any question whether any person has been validly elected as an elected member of the House of Assembly. In my view, this sub-paragraph gives jurisdiction to the Court in election petitions and the means by which a question is determined whether a person is validly elected or not is by an election petition. The position is made quite clear by the provisions of subsection (5)(a)(b) of the same section. This reads as follows:

"(5) The Legislature may make provision with respect to -

- (a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for the determination of any question under this section; and
- (b) the powers, practice and procedure of the High Court in relation to any such application."

Here again, this is a matter which falls to be prescribed by the Legislature and section 101(2) provides that, where any matter that falls to be prescribed or otherwise provided for under this Constitution by the Legislature or by any other authority or person is prescribed or provided for by or under any existing law (including any amendment to any such law made under this section), that prescription or provision shall, as from the commencement of this Constitution, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the West Indies Act 1967, this Constitution and the Courts Order) as if it had been made under this Constitution by the Legislature, or, as the case may require, by the other authority or person.

The Legislative Council (Elections) Ordinance is an existing law and therefore a prescription or provision which satisfies subsection (5) of section 34, provided that it is not in conflict with the Constitution.

Counsel for the appellant cited the case of Nair v. Teik (1967) 2 All E.R.34 as his authority for submitting that the Court has jurisdiction to entertain an appeal from an interlocutory decision in an election petition. He submitted that sections 33 and 36 of the Malaya Act were the same as section 76 of Cap.121; but he was unable to tell the Court whether there was a section similar to section 34 of the Constitution in the Malaya Act or Constitution. From my research, however, I have found the following provision section 2 in the Federation of Malaya Independence Act, 1957 -

"2. Operation of existing laws

(1) On and after the appointed day, all existing law to which this section applies shall, until otherwise provided by the authority having power to amend or repeal that law, continue to apply in relation to the Federation or any part thereof, and to persons and things in any way belonging thereto or connected therewith, in all respects as if no such agreement as is referred to in subsection (1) of section one of this Act had been concluded .....

There is a proviso to this subsection but this does not apply.

It is clear therefore that this authority is not of any assistance in deciding this issue. As against this, there is a clear provision in subsection (7) of section 34 of the Constitution which states that no appeal shall lie from any decision of the Court of Appeal in exercise of the

jurisdiction conferred by subsection (6) of this section and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1) of this section.

Counsel for the applicant suggested that if the Court found that it had no jurisdiction to grant leave to appeal because the application was caught by section 34(7) of the Constitution the Court should allow the applicant to argue the merits of the application on the authority of the case of R. v Smith (Martin) (1974) 1 All E.R. 651. In my judgment, I do not think any useful purpose will be served in acceding to this request.

For the above reasons I would refuse the motion for leave to appeal for want of jurisdiction. The respondent should have his taxed costs.

---

MAURICE DAVIS  
CHIEF JUSTICE

ST. BERNARD J.A.

I agree.

---

E.L. ST. BERNARD  
JUSTICE OF APPEAL

PETERKIN J.A.

I also agree.

---

N. PETERKIN  
JUSTICE OF APPEAL